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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,095	07/21/2003	David A. Offord	AVNT-024PN	6019

21839 7590 07/12/2005

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EXAMINER
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MATZEK, MATTHEW D

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/624,095

Applicant(s)

OFFORD ET AL.

Examiner

Matthew D. Matzek

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 6-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/31/2003.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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1. Applicant's election without traverse of Group 1, claims 1-5, in the reply filed on 6/20/2005, is acknowledged. Claims 6-20 have been withdrawn from examination.
2. Claims 1, 2 and 5 have an effective filing date of 3/23/1999. Claims 3 and 4 have an effective filing date of 1/24/2002.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 3 and 4 rejected under 35 U.S.C. 102(b) as being anticipated by Yoshimura et al. (US 5,709,870).
  - a. Yoshimura et al. teach a silver containing antimicrobial agent comprising carboxymethylcellulose (carbohydrate) that may be crosslinked and used to coat fiber and fabrics (Abstract and col. 4, lines 42-56). The coating may also contain an antioxidant,

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ultraviolet absorber, or coloring agent (col. 4, lines 52-56). Claim 5 is rejected as the limitation "synthetic fibers, man-made fibers, and natural fibers" encompasses all fibers. The Examiner takes the position that a coating for fabric or fibers is equivalent to the "sheath" limitation set forth in the instant claims.

4. Claims 1, 2 and 5 are rejected under 35 U.S.C. 102(e) as being anticipated by Yoshimura et al. See above application of patent.

5. Claims 1-3 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Nischwitz et al. (US 4,136,218).

a. Nischwitz et al. teach a coating for synthetic fibers comprising cellulose ethers with finishing agents and binding agents (Abstract and col. 3, lines 37-40).

6. Claims 1-3, and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Sato et al. (US 4,931,524).

a. Sato et al. teach a coating for synthetic or semi-synthetic fiber textiles comprising a saccharide/urethane (carbohydrate/polymer) composition (Abstract). The coating may also comprise anti-static agents (col. 9, lines 25-30).

7. Claims 1 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Bridgeford et al. (US 3,480,380).

a. Bridgeford et al. teach a coating for wool fibers comprising xanthate (carbohydrate) (Abstract).

8. Claims 1-3 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Jones et al. (US 3,380,850).

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- a. Jones et al. teach a coating for natural fibers comprising a derivative of cellulose or starch and a cross-linking agent (Abstract).

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 1-5 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1-3 of copending Application No. 10/642096. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to replace the protein sheath of the copending application with a carbohydrate sheath.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

10. Claims 1 and 5 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 7 and 8 of U.S. Patent No. 6,617,267.

Although the conflicting claims are not identical, they are not patentably distinct from each other because both the patent and the instant claims recite a carbohydrate coating for natural or synthetic fibers.

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11. The non-US documents listed on Applicant's IDS that have not been provided by Applicant or have not been provided with an English translation have not been reviewed by Examiner. This is reflected in the accompanying 1449 document.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew D. Matzek whose telephone number is (571) 272-2423. The examiner can normally be reached on 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mdm

*mdm*

*Norcas*  
**NORCATORRES  
PRIMARY EXAMINER**